

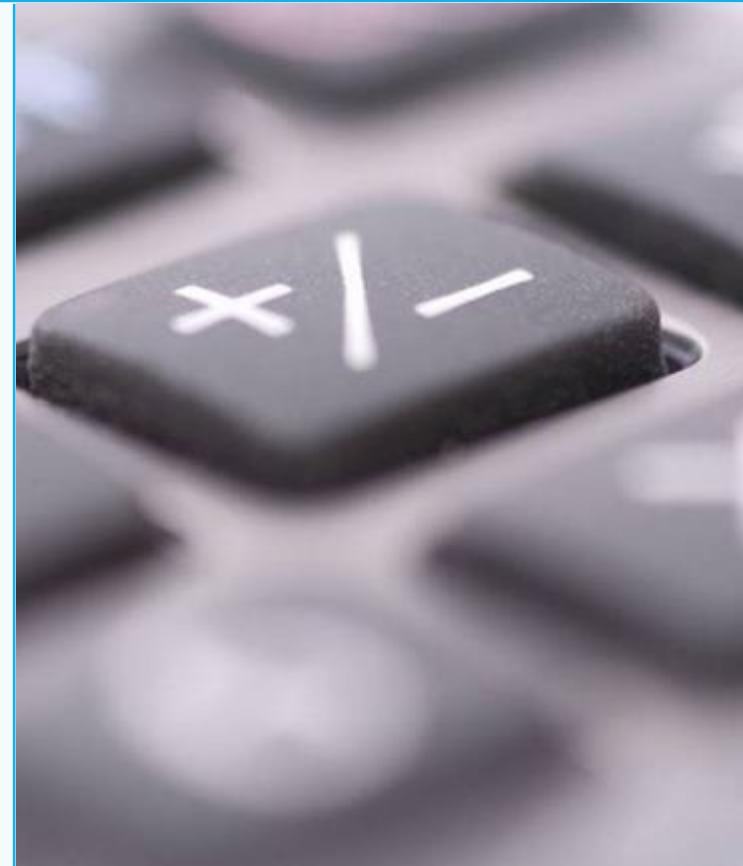


## Recent Developments in Goods & Services Tax (GST) & Issues in Input Tax Credit (ITC)

# Agenda

## I. Recent Developments in GST

- E-Invoicing where aggregate turnover exceeds Rs.20 Cr
- Interest on delayed payment of taxes
- Never-ending Saga of Input Tax Credit under GST
- Supplies to Government Entity
- Amendments to Section 49 of CGST Act





## Part I (1)

**E-Invoicing  
where aggregate  
turnover  
exceeds Rs.20 Cr**

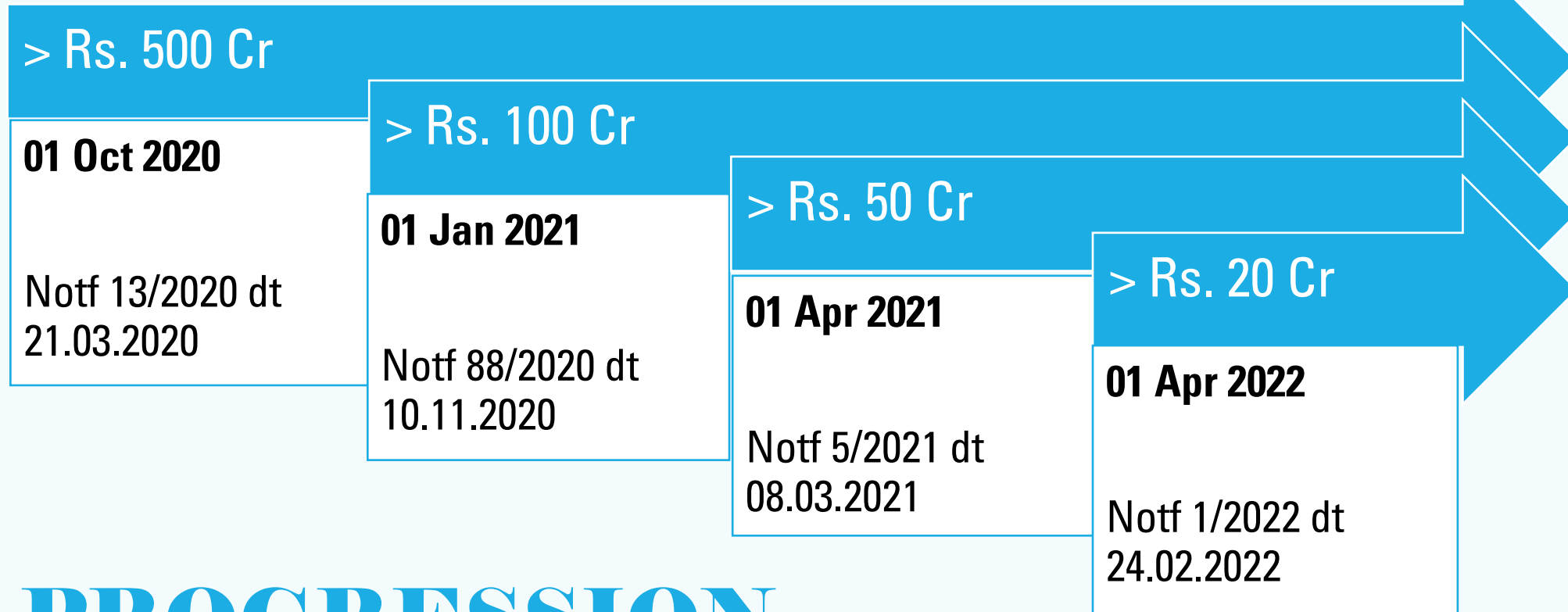
## e-Invoicing under GST

- e-Invoice is a system in which **B2B invoices are authenticated electronically** by GSTN for further use on the common GST portal.
- Under the e-Invoice system, an identification number will be issued against every invoice by the **Invoice Registration Portal (IRP) to be managed by the GST Network (GSTN)**
- E-invoicing prescribes a standardized format of invoice which can be read by a machine. **This will require the changes in accounting software. The IRP will generate QR code and send back to taxpayer**

### ELECTRONIC INVOICING



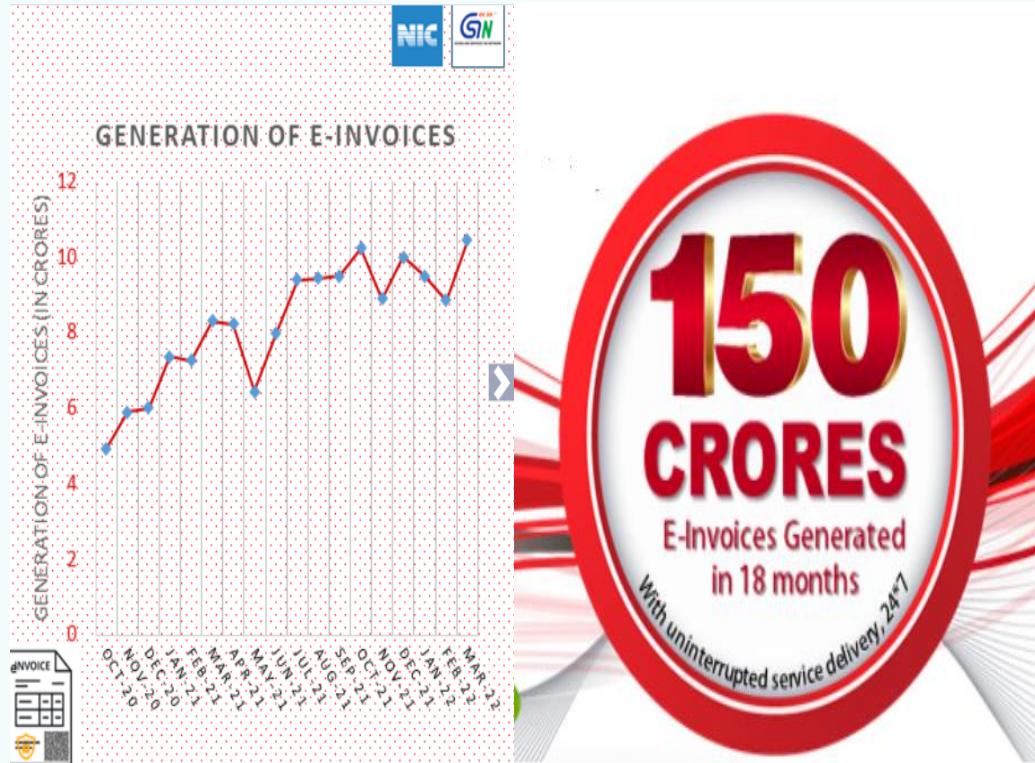
## e-Invoicing under GST



# PROGRESSION



# e-Invoicing under GST



## BENEFITS

Eliminates fake Invoice

Increased Compliance

Improved revenue collection

Avoids the errors, One standard format

Auto-population in GSTR-1 & e-Waybill

Genuineness in ITC

## Common questions?

- **Our entity's aggregate turnover had crossed the prescribed threshold during current financial year (e.g. during 2022-23). From what date, I'm supposed to start e-invoicing?**

If your turnover exceeds the prescribed limit in the current financial year, then starting e-Invoicing would be required w.e.f. beginning of next financial year.

- **What documents need reporting to IRP?**

- Invoices
- Credit Notes
- Debit Notes, when issued by notified class of taxpayers (to registered persons (B2B) or for the purpose of Exports) are currently covered under e-invoice.

- **Whether e-invoicing is applicable for invoices between two different GSTINs under same PAN?**

Yes. e-invoicing by notified persons is mandated for supply of goods or services or both to a registered person.

- **Is e-invoice required for RCM transactions?**

If the invoice issued by notified person is in respect of supplies made by him but attracting reverse charge under Section 9(3), e-invoicing is applicable.

## Common questions?

- **Is there any time window within which I need to report an invoice to IRP?**

No such validation is kept on portal

- **Can I amend details of a reported invoice for which IRN has already been generated?**

Amendments are not possible on IRP. Any changes in the invoice details reported to IRP can be carried out on GST portal (while filing GSTR-1).

- **Are there any penal provisions for not issuing invoice in accordance with GST Law/rules?**

The penal provisions are provided in Section 122 of CGST/SGST Act read with CGST Rules.

As per Rule 48(5), any invoice issued by a notified person in any manner other than the manner specified in Rule 48(4), the same shall not be treated as an invoice. So, the document issued by notified person becomes legally valid only with an IRN.

- **Can I verify e-Invoice?**

Yes, it is important to verify the e-Invoice using the QR Code Verify app





## Part I (2)

# Interest on delayed payment of taxes

## Rétrospective amendment of Sec. 50- INTEREST-ing Saga!

### Finance Act, 2019 (W.e.f 01.09.2020)

- Interest for delayed filing of returns payable 18%
- Payable on liability remitted through electronic cash ledger only
- Implies if returned filing delayed but not cash liability  
→ No interest liability
- Does not apply to tax paid pursuant to adjudication u/d 73 / 74

### Finance Act, 2021 (W.e.f 01.07.2017)

- Interest for delayed filing of returns payable 18%
- Payable on liability remitted through electronic cash ledger only
- Implies if returned filing delayed but not cash liability  
→ No interest liability
- Does not apply to tax paid pursuant to adjudication u/d 73 / 74

### Finance Act, 2022 (W.e.f 01.07.2017)

- Interest for wrong **availment & utilization** of ITC
- Interest at rate not exceeding 24%
- Implies – erroneous / inadvertent ITC availment but not utilized does not trigger interest u.s 50.
- Effective from 01 July 2017 but yet to be notified

## Let us understand some Interest-ing Scenarios

- **Scenario A** : Belated return filed & no cash liability
- **Scenario B** : Belated return filed & partly paid in cash. Balance was available in Cash ledger.
- **Scenario C** : Missed reporting one Invoice in Jan-2022. Reported in Mar-2022 but paid through ITC?
- **Scenario D**: Missed reporting tax on income, identified during the audit u/s74 but paid through ITC?
- **Scenario E**: Inadvertently availed ineligible ITC. Reversed subsequently.
- **Scenario F**: Inadvertently availed & utilized ineligible ITC. Reversed subsequently.
- **Scenario G**: Short reversal / non-reversal of ITC subsequently reversed pursuant to SCN issued u/s 73



**Input Tax  
Credit  
under  
GST**

# Never-ending Saga of Input Tax Credit

## Part I (3)

# Never-ending Saga of Input Tax Credit

## First discussion paper

- GST is a tax on goods and services with comprehensive and continuous chain of set-off benefits from the producer's point and service provider's point upto the retailer's level. **The final consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages.**

## Constitutional Amendment

- The goods and services tax shall replace a number of indirect taxes being levied by the Union and the State Governments and is intended to remove cascading effect of taxes and provide for a **common national market for goods and services.**

## Reality check

- Over a period of time, there have been a series of amendments by which, the taxpayer's right to claim and utilize ITC have been curtailed significantly and the ease of doing business is getting significantly affected

## As it was!

- Every registered person is entitled to take credit of input tax charged on any supply, which are used or intended to be used in the course or furtherance of his business. [Ref: Section 16(1) of the CGST Act]
- The conditions for taking Input Tax Credit (“ITC”) are as under :
  - The person is in possession of a tax invoice or other prescribed documents issued by the supplier,
  - The person has received the goods or services or both,
  - **The tax charged in respect of such supply has been actually paid to the Government, and**
  - The return has been filed under Section 39. [Ref: Section 16(2)]



## Was it challenged?

- Section 16(2)(c) [since 01.07.2017] specifies that ITC shall be available to the recipient if “the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply.”
- **The vires of the said section was challenged in a number of cases, mainly on the ground that**
  - i. the recipient has **no control over the supplier** to ensure that the tax (paid by the recipient to the supplier) is deposited with the Government,
  - ii.it is the **supplier’s obligation to deposit such tax** with the Government, and
  - iii.denial of ITC to the recipient in respect of supplies for which tax has been paid by the recipient to the supplier would amount to **double taxation**.

## Was it challenged?

- The challenge to Section 16(2)(c) of the CGST Act is pending before various High Courts, including:
  - **Unifab Engineering [2021 (11) TMI 646 - Bombay HC**
  - **Sahil Enterprises [2021 (9) TMI 826 –Tripura HC**
  - **Aniruddha Banerjee [2021 (8) TMI 1010 - Calcutta HC**
- Various High Courts have upheld the proposition that ITC cannot be denied to the recipients due to the defaults of the supplier
  - **East Singhbhum [2013 (294) E.L.T. 394 (Jharkhand HC)**
  - **R.S. Infra-Transmission [2018 (4) TMI 1800 - Rajasthan HC]**
  - **D.Y. Beathel Enterprises [(2021) 127 Taxman. Com 80 Madras HC]**

- **It must be noted that a similar provision, i.e., Section 9(2)(g) of Delhi VAT Act was stuck down as being unconstitutional by the Delhi High Court in Arise India Limited [2017 (10) TMI 1020 - Delhi High Court], in as much as it disallowed ITC to the purchaser due to the default of selling dealer in depositing tax. The Supreme Court has maintained the said decision in Arise India [2018 (1) TMI 555].**

## Mis-match of ITC 2A Vs. 3B?

- After the implementation of GST, taxpayers used to avail the entire ITC on their invoices. GSTR – 2A was implemented as a facilitation measure and did not impact the ability of the taxpayer to avail ITC. (**Press Release dated 18.10.2018**)

### **Insertion of Rule 36(4) vide Notification No. 49/2019 – Central Tax dated 09.10.2019**

- In order to restrict ITC on the basis of GSTR-2A, Rule 36(4) was introduced to provide that a registered person shall be eligible to take ITC up to a maximum of 120 % / 110% / 105% (as amended from time to time) of the ITC as reflecting in its Form GSTR-2A.
- Absent any provision enabling the rule-making body to place such substantive restrictions on the availment of ITC, the Constitutional validity of Rule 36(4) has been challenged

### **Insertion of Section 16(2)(aa) to give statutory sanction to Rule 36(4)**

- Section 16(2)(aa) was inserted w.e.f. 01.01.2022 to give statutory sanction to Rule 36(4).
- Therefore, w.e.f. 01.01.2022, ITC is to be taken by the recipient only in cases where the details of the invoices / debit notes are appearing in GSTR – 2B / GSTR – 2A.
- It is evident that another onerous and impossible burden has been placed on the recipient to ensure that the supplier remains tax compliant.

## New availment framework under Section 16(2)(ba)

### **Insertion of Section 16(2)(ba) vide the Finance Act, 2022**

- Section 16(2)(ba) is proposed to be inserted to the CGST Act to provide that ITC with respect to a supply would not be available if the same is restricted in the details provided in Form GSTR –2B under Section 38 of the CGST Act.
- The ITC availment process is being moved to a one-way communication process (auto-generated statement in Form GSTR – 2B) which would consist of a list of (i) eligible, and (ii) ineligible / restricted credits, in terms of Section 38.

### **Substitution of Section 38 of the CGST Act vide Finance Act, 2022**

- Section 38 prescribes that recipients cannot take ITC on invoices (ineligible credits) from suppliers who have:
  - i. raised invoice within such period of registration, as may be prescribed;
  - ii. defaulted in payment of tax for a continuous period, as
  - iii. short paid the tax under Form GSTR –3B as compared to the self-assessed liability under Form GSTR –1;
  - iv. availed ITC in excess of eligible ITC;
  - v. defaulted in paying the prescribed minimum output tax liability in cash; and
  - vi. Such other cases as may be prescribed.

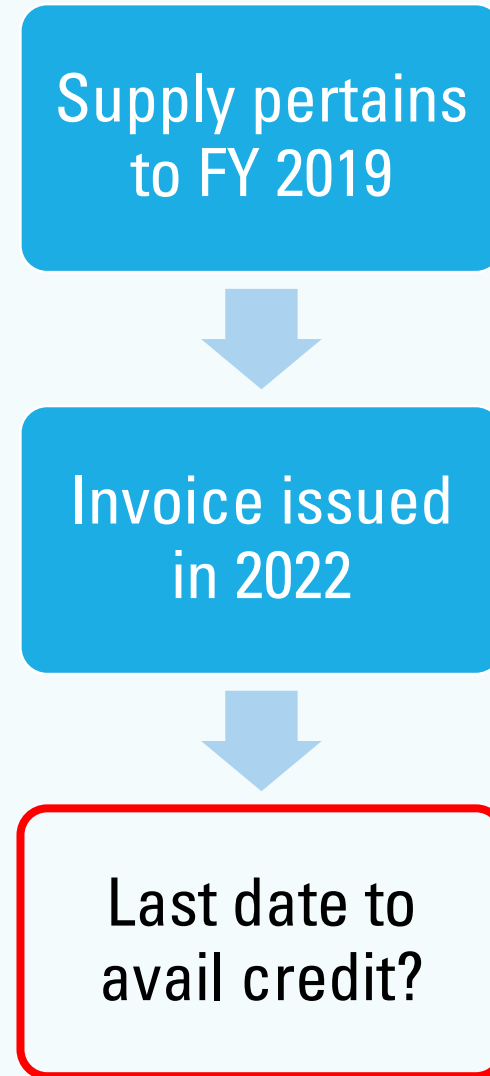
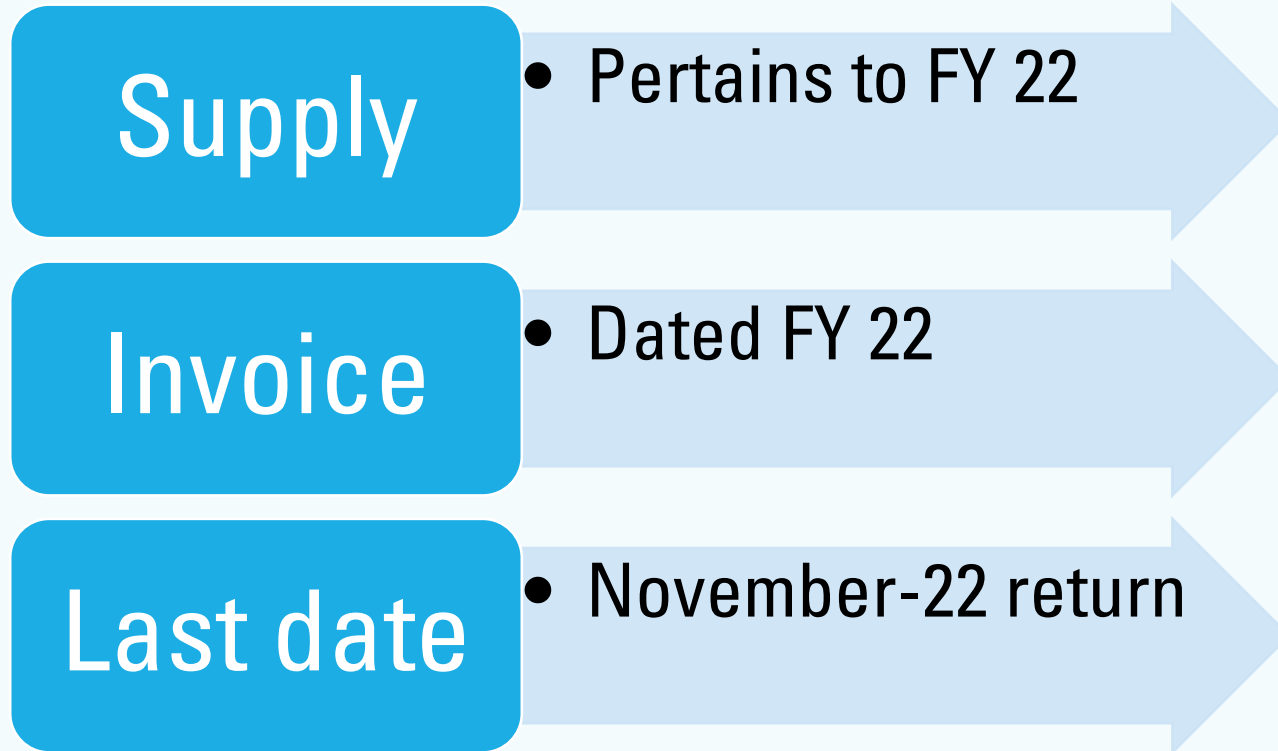


## Sec 16

# Last date to claim ITC

# What is the Conundrum?

Last date of an invoice : Invoice date Vs Supply Date





# ITC CONUNDRUM: Invoice date Vs Supply Date

Section 99 of Finance Act, 2022 amending Section 16(4) of CGST Act, 2017

- Last date to avail input tax credit for any invoice – Sec 16(4):

*“(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.”*

**Finance Act, 2022 extends the last date to avail input tax credit of any invoice to November of the succeeding financial year. Implies, 2 additional months given to tax payers to reconcile, trace and identify missed input tax credit.**



## Part I(4)

# Supplies to Government Entity

# Supplies to Government

## Types of service recipients

- Central Government
- State Government
- Local authority
- Government Entity
- Governmental Authority

Exempt

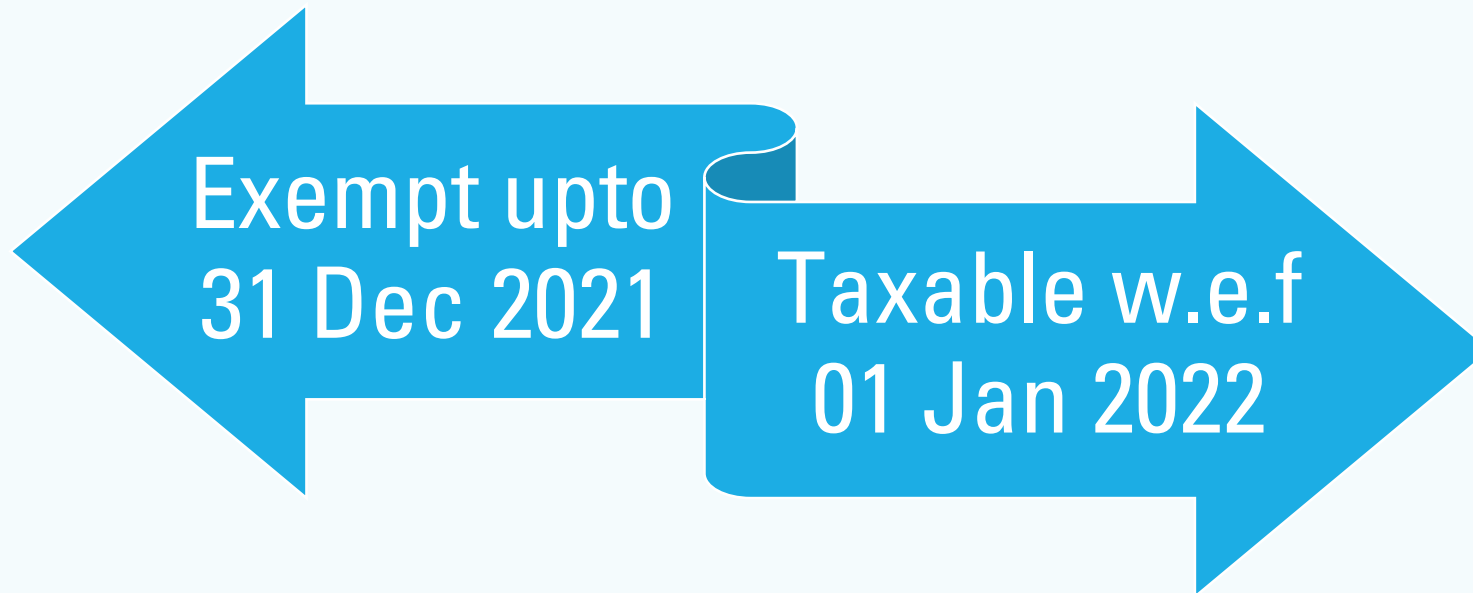
Standard-rate

Concessional rate

# Exemption withdrawn

Notification No. 16/2021-CT (R) dated November 18, 2021 w.e.f. 01 Jan 2022

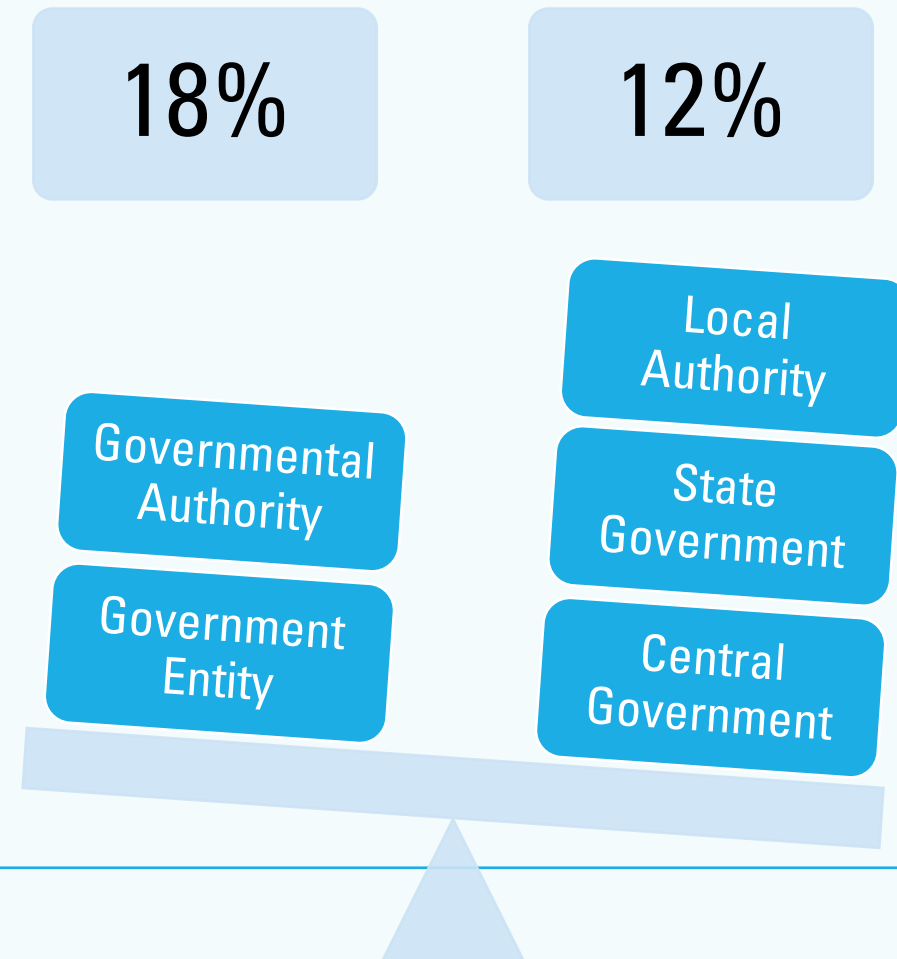
- Entry 3 of Notification No. 12/2017:
- Pure Services provided to Governmental authority / governmental entity by way of any activity in relation to any function entrusted under article 243G / 243W of constitution



# Concessional rate of 12% - withdrawn

Notification No. 15/2021 CT(R) dated November 18, 2021 w.e.f 01 Jan 2022

- > 50 Advance rulings given so far
- Supplies made to “Government Entity” always matter of contention
- 12% / 18% issue
- Concessional rate scope removed w.e.f 01 Jan 2022



# CLOUD KITCHEN

— All You Need To Know —



## Cloud Kitchens

Included in  
Sec 9(5)  
RCM



## Sec 9(5) list

### Supplies through ECO – GST payable under by ECO

- W.e.f 01 July 2017, below supplies when made through e-commerce operators were liable to GST in the hands of ECO
- Mandatory registration provisions were not applicable u/s 24
- Goods Transportation- Lynk, Porter
- Passenger Transportation – Ola, Uber, rapido
- Utility Services – Urban Company
- Accommodation services (If otherwise not liable to be registered) – Oyo, Make my trip, Air bnb

## Sec 9(5) list

Supplies through ECO – GST payable under by ECO



Added into this list  
Registration no longer  
mandatory

**The End**

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